IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Dated of decision: 15.07.2006

Criminal Appeal No. 847 of 2001
(Old No. 2042 of 1987)

1. Liakat (since deceased)
2. Imran alias Irfan
3. Charan Singh (since deceased)
   S/o Chamela Singh
4. Mohar Singh S/o Vijai Singh
   All R/o Village Bhoorpur
   P.S. Kotwali
   District- Dehradun. .....Appellants

Versus

State Respondent

Shri R.P. Nautiyal, learned counsel for appellant No. 2 and amicus curiae for appellant No. 4.
Shri D.K. Sharma, Government Advocate for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initials of Judges)

Date: 15.07.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein-after for brevity referred as Cr.P.C), is directed against the judgment and order dated 06.08.1987, passed in Sessions Trial No. 09 of 1980, whereby learned Additional Sessions Judge, Dehradun, has convicted appellants on the charge of offence, punishable under Section 302 read with Section 149 of Indian Penal Code, 1860 (herein after referred as I.P.C.), under Section 147/148 I.P.C. and under Section 323 read with

Section 149 I.P.C. And each one of them has been sentenced to imprisonment for life under Section 302/149 I.P.C., and rigorous imprisonment of six months under Section 323 I.P.C. read with Section 149 I.P.C. Each of appellants Liakat and Mohar Singh, is further sentenced to rigorous imprisonment of one year under Section 147 of I.P.C. and each one of appellants Charan Singh and Imran alias Irfan further sentenced to rigorous imprisonment of one year and six months under Section 148 of I.P.C.

2. We hard learned counsel for the parties and perused the entire record.

3. Prosecution story in brief is that P.W. 1 Amar Singh, lodged a First Information Report (Ext. A-1) on 25.11.1979, at 9:05 A.M. with Police Station Kotwali, Dehradun. As per the allegations contained in the First Information Report, there was enmity between Amar Singh's nephew Sheesh Pal (deceased) resident of village Pallio and appellant No. 3 Charan Singh of adjoining village Bhurpur. About 3-4 days before the date of incident, a quarrel took place between Sheesh Pal and Charan Singh, where after on 24.11.1979, Charan Singh sent his nephew Mohar Singh (appellant No. 4) to call Sheesh Pal to Bhurpur for amicable settlement of dispute between them. On this, Sheesh Pal (deceased) along with Amar Singh (P.W.1), Padam Singh (P.W.2), Ram Kishan (P.W.3) and three other persons accompanied Mohar Singh to the house of Charan Singh. However, Charan Singh was not found

in his house. Mohar Singh left Sheesh Pal and others at his house with an excuse that he is going to find out Charan Singh. Sheesh Pal and others waited for sometime and when no one turned up, they left for their village. Around 7:30 P.M., when Sheesh Pal along with Amar Singh (P.W. 1), Padam Singh (P.W. 2), Ram Kishan (P.W.3) and three others, on their return journey, reached near RESHAM FARM, they were attacked by appellants Liakat (friend of Charan Singh), Charan Singh, Mohar Singh, Imran alias Irfan, and their 2-3 associates, who were armed with deadly weapons. Firstly, appellant Mohar Singh, got hold of Sheesh Pal. When Ram Kishan Wanted to intervene and save Sheesh Pal, appellant Liakat gave a lathi blow on him, on which the persons accompanying Sheesh Pal Retreated. Then, Sheesh Pal was dragged by the appellants and was mercilessly attacked with lathi, khukri (a sharp edged weapon) and spear. The above named witnesses of the incident, saw the incident in the light of the torches in their possession. After committing murder of Sheesh Pal, appellants left the place. The above named witnesses, remained whole of the night with the dead body of Sheesh Pal and in the morning Amar Singh (P.W. 1) went to his village Pallio and from there, he went to the police station to lodge First Information Report (Ext. A01), check report (Ext. A-7) was prepared by constable Clerk Ram Kishore and necessary entry in the general diary was made, a copy of extract of which is Ext. A-8. The crime registered against the appellants was investigated by

P.W 7 Samar Bahadur Singh, who inspected the place of occurrence. He, after taking the simple soil and blood-stained soil from the spot, prepared memo (Ext. A-10). The Investigating Officer, took the dead body of Sheesh Pal in his possession and prepared inquest report (Ext. A-11). He further prepared sketch of the dead body (Ext. A-12), Sample seal (Ext. A-13), police form No. 13 (Ext. A-14), police from No. 33 (Ext. A-15) and letter (Ext. A-16) requesting to Chief Medical Officer for post mortem examination of the dead body. P.W. 7 Samar Bahadur Singh also prepared the site plan (Ext. A-17) and recorded the statements of the witnesses. Meanwhile, P.W. 5 Dr. C.J. Singh Hora, conducted autopsy on the dead body of Sheeshpal and opined that cause of death was shock and haemorrhage due to injuries sustained by the deceased. After completion of the investigation, the Investigating Officer submitted the charge sheet against accused liakat, before the Magistrate concerned. (The other accused persons namely, Charan Singh, Mohar Singh and Irfan, were shown in the charge sheet in the column of absconders).

4. The learned Magistrate, on receipt of charge sheet, after giving necessary copies, as required under Section 207 of Cr.P.C., committed the case to Court of Sessions for trial. The Sessions Judge, after hearing the prosecution and the defence, framed charge of three heads against appellant Liakat, for the offence allegedly committed by him, punishable under Section 147 I.P.C., 302/149 I.P.C. and Section 323 I.P.C. During

examination in chief of P.W. 1 Amar Singh, the trial court exercising its power under Section 319 of Cr.P.C., summoned rest of the accused/appellants namely, Charan Singh, Mohar Singh and Imran alias Irfan to face the trial. Again, after hearing on charge, against appellants Charan Singh, Mohar Singh and Imran alias Irfan, a separate charge of three heads was framed in respect of the offence, allegedly committed by them, punishable under Section 147/148 I.P.C., 302/149 I.P.C. and 323/149 I.P.C. All the accused/appellants, pleaded not guilty and claimed to be tried. On this, prosecution got further examined P.W. 1 Amar Singh, informant and eye-witness, P.W. 2 Padam Singh (declared hostile), P.W. 3 Ram Kishan (another eye-witness), P.W. 4 Dr. S. Prasad, P.W. 5 Dr. C.J. Singh Hora (who conducted autopsy on the dead body), P.W. 6 Dr. R.N. Singh (who medically examined the injuries of witness Ram Kishan) and P.W. 7 Sub-Inspector Samar Bahadur Singh (Investigating Officer). All the oral and documentary evidence were put to the accused persons under Section 313 of Cr.P.C., in reply to which they alleged the evidence adduced against them to the false and they were falsely implicated in the crime due to enmity. However, no evidence was adduced in defence. Learned trial court, after hearing the prosecution and the accused persons, found all the four accused persons namely, Laiakat, Charan Singh, Mohar Singh and Imran alias Irfan, guilty of offence punishable under Section 302/149 I.P.C., and Section 323/149 I.P.C. Accused Liakat and Mohar Singh were further found guilty of offence punishable under

Section 147 of I.P.C., and accused Charan Singh and Imran alias Irfan further found guilty of offence punishable under Section 148 of I.P.C. After hearing on sentence, sentenced each of the convicts to imprisonment for life under Section 302/149 I.P.C., rigorous imprisonment of six months under Section 323/149 I.P.C. Each one of the accused Liakat and Mohar Singh was further sentenced to rigorous imprisonment of one year under Section 147 of I.P.C., and each one of Charan Singh and Imran alias Irfan further sentenced to rigorous imprisonment of one year and six months under Section 148 of I.P.C. Aggrieved by judgment and order dated 06.08.1987, passed by the trial court, this appeal was preferred before the Allahabad High Court. The appeal is transferred to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of Sheesh Pal (deceased). P.W. 5 Dr. C.J. Singh Hora, Medical Officer who conducted autopsy on the dead body of deceased Sheesh Pal on 26.11.1979 at 1:30 P.M. and prepared the post mortem examination report Ext. A-4 (carbon copy of which is Ext. A-5), recorded following ante mortem injuries on the person of the deceased:-

1. **Incised wound 4 cm x ½ cm x ½ cm deep, on top of head.**
2. **Incised wound 5cm x 1 ½ cm x bone deep, on right side fore**

head, 4cm above right eyebrow. Underneath forehead bone is also cut.

3. **Incised wound 3cm x 0.5cm x skin deep right side of scalp 1 ½ cm above right ear.**
4. **Lacerated wound 3 . 5 cm x 2 cm bone deep right side of face 3 cm away from the right eye.**
5. **Incised wound 'x' in shape, with 1imbs measuring 6 cm x ½ cm x bone deep on the top of head left side 10 cm above left ear.**
6. **Incised wound 3 cm x 1 cm on the left side of fore head, 1 cm above left eyebrow.**
7. **Abraded contusion 4 cm x 3 cm on the back of head.**
8. **Incised wound 3 cm x 1 cm x 3 cm deep on the back of neck, middle part.**
9. **Incised wound 2 cm x 1.5 cm x cavity deep in left scapular area.**
10. **Incised wound 4 cm x 1 .5 cm into muscle deep on lower end of right scapular area.**
11. **Abrasion 6 cm x ½ cm on the right daltrid area.**
12. **Abrasion 4 . 5 cm x 1 cm on outer aspect of right arm middle part.**

13. **Contusion 6 cm x 1 cm on outer aspect of right arm, lower one third,**
14. **Incised wound 6 . 5 cm x 2 cm bone deep at the base of right index finger.**
15. **Lacerated wound 5 . 5 cm x 3 cm scalp deep on the back of right arm.**
16. **Incised wound 9 cm x 3 . 5 cm x muscle deep on outer side of left arm, lower 1/3.**
17. **Multiple abrasion in an area of 26 cm x 12 cm on front of left knee and left leg.**
18. **Multiple abrasion in an area 20 cm x 8 cm on the front of right leg.**

On internal examination of the dead body, the Medical Officer found that the brain was congested, there was heaemotoma under the fractured bone of head. He further deposed that the left pleura was torn and pleural cavity contained ½ pint of blood, which was caused as a result of injury No. 9. The upper part of the left lung had been punctured, as a result of injury No. 9. In the opinion of Dr. C.J. Singh Hora (P.W. 5), the cause of death was shock and haemorrhage, as a result of ante mortem injuries.

6. P.W. 6 Dr. R.N. Singh medically examined P.W. 3 Ram Kishan on 25.11.1979 at 9:45 P.M. Doctor

found contusion with swelling 8cm x 5cm on the left side of eye of Ram Kishan.

7. P.W. 3 Ram Kishan, who is an injured eye-witness, has stated on oath that Sheesh Pal had enmity with Charan Singh (appellant No. 3). Liakat (appellant No. 1) is friend of Charna Singh. P.W. 3 Ram Kishan further states that about 3-4 days before the date of incident, Sheesh Pal had a quarrel with Charan Singh due to which Charan Singh harboured enmity with him. The witness further states that Mohar Singh (appellant No. 4) is nephew of Charan Singh. Charan Singh got sent Mohar Singh to Sheesh Pal with the message that Charan Singh wants to get the matter amicably settled at his residence. Believing him, Sheesh Pal along with Amar Singh (P.W. 1), deponent (P.W. 3 Ram Kishan), Padam Singh (P.W. 2), Naresh and two other persons, reached in the village Bhurpur. But they did not find Charan Singh there. P.W. 3 Ram Kishan further states that after sometime Mohar Singh, giving an excuse that he is going to call Charan Singh, slipped from his house. After waiting for about more than half an hour, Sheesh Pal, the deponent (P.W. 3), Padam Singh (P.W. 2), Amar Singh (P.W. 1). And other persons proceeded to go back to their village. At about 7:30 P.M., when they reached near RESHAM FARM, all of a sudden, accused/appellants Liakat, Charan Singh and Mohar Singh along with 3-4 other associates including Irfan, surrounded Sheesh Pal and others. Appellant Mohar Singh caught hold of Sheesh Pal, on this deponent (P.W. 3) went forward to save Sheesh Pal but

Accused/appellant Liakat gave a lathi blow on his (Ram Kishan's) head. Then one of the assailant fired a shot from a fire arm and the sound of fire caused terror and witnesses including deponent (P.W. 3), Amar Singh (P.W. 1), Padam Singh (P.W. 2) retreated. Then, accused persons dragged Sheesh Pal down on the road side. The accused persons were armed with Khukri, lathi and spear and started giving blows of deadly weapon on the person of Sheesh Pal. P.W. 3 Ram Kishan further states that in the light of torch, he could identify the accused persons.

8. P.W. 2 Padam Singh, an eye-witness of the incident, was got declared hostile by the prosecution, as he did not support the prosecution story in full. However, he did support the prosecution story to the extent that Sheesh Pal and Charan Singh had sour relations. Charna Singh was resident of adjoining village of Bhurpur while Sheesh Pal was resident of village Pallio. P.W. 2 Padam Singh further corroborates the fact that on 24.11.1979, he was told by Ram Kishan (P.W. 3) that Charan Singh had got sent Mohar Singh (appellant No. 4) to settle the matter amicably. This witness further corroborates that he along with Ram Kishan (P.W. 3), Amar Singh (P.W. 1), Raj Kumar and Sheesh Pal, went to village Bhurpur in response to the call of Charan Singh, received through Mohar Singh. The witness further corroborates the fact that Charan Singh was not found in the house and after waiting for him, for sufficient time, Sheesh Pal and others left the place, for their return journey to their

village. According to this witness, hardly they reached near RESHAM FARM, 8-10 person attacked Sheesh Pal and others. However, beyond this, prosecution story is not supported by this witness, as he did not name the accused persons.

9. P.W. 1 Amar Singh is informant and eye-witness of the incident. He has fully corroborated the prosecution story, as narrated by P.W. 3 Ram Kishan. It is not necessary to repeat the entire prosecution story. After narrating entire prosecution story, P.W. 1 Amar Singh has stated that in the night due to the fear he and his other associated could not leave the place of occurrence and remained with the dead body of Sheesh Pal and only in the morning he went to the village and thereafter to police station at 9:00 A.M., where he lodged First Informantion Report (Ext. A-1). The presence and testimony of this witness and that of P.W. 3 Ram Kishan is natural and trust worthy. The statement of witness Ram Kishan not only gets corroboration from what P.W. 1 Amar Singh has stated but also from P.W. 6 Dr. R.N. Singh, who medically examined him on 25.11.1979 and found on his person, injury of contusion with swelling over left eye in an area of 8 cm x 5 cm. According to the Medical Officer, the injury could have been caused by blunt object like rod (DANDA) on 24.11.1979, at about 7:30 P.M.

10. Statements of eye-witnesses namely P.W. 1 Amar Singh and P.W. 3 Ram Kishan further get corroboration from the ante mortem injuries, found on the dead body

by P.W. 5 Dr. C.J. Singh Hora, who has recorded the ante mortem injuries, as quoted above, in post mortem examination report Ext. A-4 (carbon copy of which is Ext. A-5)

11. Learned counsel for the appellants argued that there is delay in lodging the First Information Report on the part of the complainant and the appellants have been named in the First Information Report only due to the enmity with the deceased. We do not see any force in the argument, for the reason that P.W. 1 Amar Singh, informant, in his statement, has explained that due to the fear of the accused persons, he and other witnesses did not leave the place of occurrence in the night and remained with the dead body. It is further stated by the witness that it is only in the morning he could muster the courage to go to the village and then to lodge the First Information Report. As such, we are of the view that delay in lodging the First Information Report has sufficiently been explained by the prosecution and there is no reason to believe that P.W. 1 Amar Singh, who is nephew of the deceased would falsely implicate the appellants and save the real culprits.

12. The next submission on behalf of the appellants is that the presence of P.W. 1 Amar Singh and P.W. 3 Ram Kishan, at the place of occurrence is doubtful. This submission again has little force. P.W. 3 Ram Kishan is an injured eye-witness. His presence at the spot cannot be doubted. Statement of P.W. 1 Amar Singh, who was accompanying his uncle Sheesh pal

(deceased) on the day of the incident, is natural and trustworthy, for the reason that when appellant Charan Singh invited Sheesh Pal for amicable settlement, in view of the enmity between the parties, deceased Sheesh Pal has naturally taken with him persons of his village, which included P.W. 1 Amar Singh, nephew of the deceased.

13. It is contended by Shri R.P. Nautiyal, learned counsel for the appellants that in view of Sub-section (4) (a) of Section 319 of Cr.P.C., the trial court should have recorded the entire evidence afresh after the appellants Charan Singh, Mohar Singh and Imran, were summoned by the Court under said Section. It is true that under sub-section (4) (a) of Section 319 of Cr.P.C., it is provided that where the court proceeded against any person under sub-section (1) (of Section 319) then the proceedings in respect of such persons, shall be commenced afresh and the witnesses reheard. Sub-section (1) of Section 319, refers to the persons, who were not accused in the offence in respect of which trial started. In the present case, appellants Charan Singh, Mohar Singh and Imran alias Irfan, were also shown in the column of absconding accused persons. On close scrutiny of the evidence recorded by the trial court, we found that only after a part of examination in chief of P.W. 1 Amar Singh, the trial court summoned the appellants Charan Singh, Mohar Singh and Imran alias Irfan, exercising its power under Section 319 (1) of Cr.P.C. Not only all the nine prosecution witnesses were cross-examined by these accused/appellants but

also their examination in chief was recorded before them. Only a part of examination in chief of P.W. 1 Amar Singh was recorded prior to summoning of said three accused/appellants. The examination in chief of P.W. 1 Amar Singh strarted before the trial court on 20.09.1984. After the three absconding accused were summoned by the trial court and necessary copies were given to them. Charge was framed against these three accused/appellants on 06.02.1985. Again examination in chief of P.W. 1 Amar Singh was recorded by prosecution on 09.07.1986. In said statement this witness has stated that accused/appellants, armed with Khukri, lathies and spear, dragged Sheesh Pal. P.W. 1 Amar Singh in his examination in chief dated 09.07.1986, i.e. after the charge framed agaisnt the accused persons, summoned under Section 319 (1), further stated that both Irfan and Mohar Singh were armed with Khukries. He has further stated that Mohar Singh gave blows of Khukri even when Sheesh Pal fell down after being attacked. Not only this, the witness stated that the accused/appellants were accompanied with other three persons also. P.W. 1 Amar Singh, thereafter, has narrated that due to the fear after the incident, he and the other witnesses could not dare to go to the police station, which was at a distance from the place of occurrence and it is only in the morning he could lodge the First Information Report (Ext. A-1). Excluding the previous statement of P.W. 1 Amar Singh, which was recorded before the aforesaid three appellants namely Charan Singh, Mohar Singh and Imran alias Irfan, were summoned, statement recorded

Of this witness in their presence after framing of the charge is admissible in law to be read against accused persons. This witness has been cross-examined at length by the appellants. As far as P.W. 2 Padam Singh, P.W. 3 Ram Kishan, P.W. 4 Dr. S. Prasad, P.W. 5 Dr. C.J. Singh Hora, P.W. 6 Dr. R.N. Singh and P.W. 7 Samar Singh Bahadur, Investigating Officer, are concerned, their examination in chief as well as cross examination were recorded in the presence of accused/appellants, as required under Section 273 of Cr.P.C. As such, there is no error of law committed by the learned Sessions Judge, which may vitiate the trial.

14. For the reasons, as discussed above, we are in agreement with the trial court that the prosecution has been successful in proving the charge framed against accused/appellants. We do not see any error of fact or that of law in the impugned judgment and order dated 06.08.1987, passed by the trial court. Accordingly, the appeal of appellants Imran alias Irfan and also that of Mohar Singh is dismissed. Their conviction and sentence, as awarded by the trial court is maintained. They are on bail. Their bail bonds are cancelled. The court concerned shall take these two appellants into custody to make them serve out the sentence awarded against them. (Appeal of appellant Liakat and Charan Singh, stand abated due to their death).

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 15.07.2006
Sweta